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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,014	02/19/2002	Andrew L. Pansini	032698/3	5235

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EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/079,014	<b>Applicant(s)</b> PANSINI, ANDREW L.	
	<b>Examiner</b> Robert M. Fetsuga	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2004.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13 and 16 is/are rejected.
- 7) ☒ Claim(s) 12 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. The proposed drawing correction filed on February 11, 2004 has been approved.
2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the vertically adjustable "member" set forth in claim 5 and the "method" set forth in claim 16 could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

The proposed amendment to pages 4 and 7 of the specification as filed February 11, 2004 would overcome the objection to claim 5, and to claim 16 regarding the "adjusting" limitation ("providing" not addressed). However, the proposed amendment does not comply with 37 CFR 1.121(b).

3. It is noted applicant's proposed amendment to the claims as filed February 11, 2004 does not comply with 37 CFR 1.121(c). As applicant did not attempt to amend original claims 1-14 and 16, prosecution will not be adversely affected by further examination in spite of such non-compliance.

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 4, 9, 13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Whitten, Jr. '111.

The Whitten, Jr. '111 (Whitten) reference discloses a tank/chamber 48 including a fill device 56 and a drain device 45; a swimming pool 10; a skimmer 14; and a "platform" (vertical wall of 48), as claimed.

Applicant argues at pages 4-5 of the response filed February 11, 2004 Whitten does not teach setting the height of one device by setting the height of the other device. The examiner can not agree. Both the fill device 56 and drain device 45 of Whitten are fixedly connected to a common vertical

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platform (wall of 48). The heights of both devices would necessarily be "adjusted" simultaneously at least when the platform is installed. The broad claim language does not distinguish this disclosure in Whitten.

6. Claims 1, 2, 4-7 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Grewing.

The Grewing reference discloses a tank/chamber 25 including a fill device 41 and a drain device 35 (col. 2 ln. 17); a swimming pool 13; a vertically adjustable member 53,54; and adjusting means 52, as claimed.

Applicant argues at page 5 of the response Grewing does not teach "simultaneously adjusting only the float valve and overflow drain device within tank 25, as recited in claim 1" (and claim 16). The examiner has again reviewed claims 1 and 16, but finds no mention of the argued claim limitations. Indeed, the fill device 41 and drain device 35 of Grewing are connected to each other and would necessarily simultaneously be "adjusted" in height when the height of the adjustable member 53,54 is adjusted. Note is made of the sentence bridging columns 3 and 4 in Grewing, for example. The broad claim language does not distinguish this disclosure in Grewing. Applicant argues at pages 5-6 of the response the fill device and drain device of Grewing are not connected to the vertically

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adjustable member 53,54. The examiner can not agree as the two devices and member are not disconnected as illustrated in Fig.

2, for example.

7. Claims 1-4, 8 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by St. Ledger.

The St. Ledger reference discloses a tank/chamber 3 including a fill device 20 and a drain device 15; a swimming pool 8; and adjusting means 16,24,25, as claimed.

Applicant argues at pages 6-7 of the response St Ledger does not teach setting the height of one device by setting the height of the other device. The examiner can not agree. Both the fill device 20 and drain device 15 of St. Ledger are fixedly connected to a common vertical plate/platform (wall of 3). The heights of both devices would necessarily be "adjusted" simultaneously at least when the platform is installed. Note is made of lines 11-12 in column 2 of St. Ledger, for example. The broad claim language does not distinguish this disclosure in St. Ledger.

8. Claims 1-4, 8-11, 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over St. Ledger and Maxhimer.

Re claim 11, the St. Ledger chamber includes plates forming the walls thereof.

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Although St. Ledger pool level control device does not include a skimmer, as claimed, attention is directed to the Maxhimer reference which discloses an analogous pool level control device which further includes a skimmer (col. 3 lns. 42-53). Therefore, in consideration of Maxhimer, it would have been obvious to one of ordinary skill in the art to associate a skimmer with the St. Ledger pool level control device in order to monitor the water level in a swimming pool of the type having a skimmer.

9. Claims 12 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 17 would be allowable if submitted in compliance with 37 CFR 1.121(c). However, new claim 17 would then be redundant to pending claim 12.

10. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS

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of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 703/308-1506 who can be most easily reached Monday through Thursday.

A handwritten signature in dark ink, appearing to read 'Robert M. Fetsuga', is positioned above the printed name and title.

Robert M. Fetsuga  
Primary Examiner  
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